



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0346

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Training Referral

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee was unprofessional when removing an individual from a premise for trespassing.

SUMMARY OF INVESTIGATION:

The Complainant alleged that Named Employee #1 (NE#1) was unprofessional and told the security guards that NE#1 did not want to enforce the law because "no one else is" and that they're "not going to treat this area any more special than the rest of the city" when responding to a call to trespass a subject from the property.

NE#1 responded to a call to remove a person (Subject) from a premise who was reported to be trespassing. The Subject was sitting within property boundaries lines and had failed to move when asked to do so by security staff working there. On arrival at the location, NE#1 met with a security guard, Community Member #1 (CM#1), who informed him that the Subject was refusing to move. NE#1 spoke with both the Subject and CM#1 and the entirety of these conversations are captured on NE#1's BWV.

When speaking with the subject about the trespassing, NE#1 stated, "But it doesn't change the fact that this is private property. Where you are sitting is private property. You can literally – just sit your anus or your gluteus maximus." The Subject responded, "Uh huh, or your buttocks" to which NE#1 responded, "Or your buttocks."

CM#1 wanted the Subject moved away from the property. The Subject complained to NE#1 that CM#1 shone his flashlight in her face, intermittently turned his flashlight on and off, and cussed at her. The Subject explained that all she was doing was sitting and reading. NE#1 explained to the Subject that she was trespassing on private property, and the Subject subsequently moved away from the private property.

CM#1 alluded to a trespass regulation pertaining to someone being three feet from the property. NE#1 stated back to CM#1 "That's not enforced anywhere in this city. And we're not going to start here. There's tents all over this city. Downtown. Neighborhoods. We're not enforcing three feet."



OPA's search of local and state statutes located nothing referring to a three-foot offset from private property in reference to trespass. After additional research it is possible that private property extends onto a sidewalk, but this would require a survey of the property to determine. Based on OPA's research, the three-foot distinction was used in determining repair responsibility and liability and was not referenced for trespass purposes in any way. OPA's research found that sidewalks are generally maintained as easements by the municipality in which the private property is located, and that they are maintained for use as public rights of way.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 Standards and Duties 10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

When interviewed, NE#1 stated that he did not believe his comments regarding the specify body parts, namely "anus or your gluteus maximus," were in any way disrespectful. NE#1 stated that he used this language so that that Subject understood what he was referring to. NE#1 stated that he believed this language was professional and appropriate phrasing to request the Subject to move on. OPA notes that the Subject engaged in this conversation with the NE#1 and did not appear to be offended by the language used. The subject responded to the NE#1 by using the term "buttocks" to paraphrase the terms used by NE#1.

OPA asked if NE#1 thought that the comments he made to security guards would undermine the public trust in the department, NE#1 replied, No. NE#1 stated that he was being honest and truthful to CM#1. NE #1 stated that he has never seen heard, or read about, anything that would indicate a three-foot stand-off from private property is enforceable, and that he was explaining to the Security guards why he was doing what he was doing. OPA asked NE#1 considered his manner and tone of speech with CM#1 to be professional. NE#1 answered that he did.

As part of OPA's investigation, PAS entries were obtained for NE#1. A PAS entry shows Coaching/Mentoring on 10/15/2019 regarding "Arguing with radio/communications." NE#1's Administrative Lieutenant indicated it was his fourth complaint during her command of the watch. Another PAS entry shows Training on 6/12/2019 regarding a complainant/victim who was dissatisfied with an investigation. The PAS notes included the following comment: "We talked about eliminating comments that could be construed as flippant or uncaring by a victim/complainant." OPA recognizes that honesty is one of the foundational pillars of good police work. However, *how* something is being said is often as important as *what* is being said. NE#1 needs to be cognizant of how he engages with community members in this regard. Accordingly, OPA recommends that this allegation be processed as Not Sustained – Training Referral.



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- **Training Referral:** NE#1's chain of command should discuss this incident with him and review together the BWV. NE#1's chain of command should go over the expectations of professional engagement with community members. NE#1 should receive retraining and counseling in this regard. This retaining and counseling should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**